

Senate File 346 - Introduced

SENATE FILE _____
BY McCOY

Passed Senate, Date _____ Passed House, Date _____
Vote: Ayes _____ Nays _____ Vote: Ayes _____ Nays _____
Approved _____

A BILL FOR

1 An Act providing for the sale of Iowa communications network
2 assets, providing for related technical and substantive
3 changes, and providing an effective date.
4 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
5 TLSB 1739XS 83
6 rn/nh/8

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1 1 Section 1. SALE OF IOWA COMMUNICATIONS NETWORK ASSETS ==
1 2 FINDINGS AND PURPOSE AND DEFINITIONS.
1 3 1. FINDINGS AND PURPOSE. The Iowa communications network
1 4 is a valuable state telecommunications asset and has provided
1 5 fair, reasonable, and predictable access to advanced
1 6 telecommunications technology for authorized users. With
1 7 video classrooms located statewide, authorized users are able
1 8 to equally access state-of-the-art voice, video, data, and
1 9 internet services at comparable prices statewide, regardless
1 10 of location. At a time when budgets are strained and there is
1 11 a shortage in the availability of educators, it is essential
1 12 that the educational content carried over the Iowa
1 13 communications network be preserved and enhanced. It is also
1 14 vital that secure telecommunications services provided by the
1 15 Iowa communications network to homeland security and public
1 16 defense providers be retained. The state desires to remain a
1 17 credible business partner to all current authorized network
1 18 users. To ensure that the utilization of the Iowa
1 19 communications network resource is maximized while minimizing
1 20 further investment by the state to maintain the
1 21 infrastructure, it is in the best interest of the citizens of
1 22 this state to offer some of the assets of the Iowa
1 23 communications network for sale, while retaining ample
1 24 capacity to provide authorized users required
1 25 telecommunications services now and in the future. Through a
1 26 sale of most of the fiberoptic cable and optronics, or light=
1 27 passing equipment, and retaining capacity through long-term
1 28 infeasible right-of-use agreements, the state would continue
1 29 to provide telecommunications services and adequate capacity
1 30 into the future. Selling the Iowa communications network
1 31 assets using an intermediary professional agent specializing
1 32 in telecommunications resources to market the assets will
1 33 strengthen the ability of the state to receive a fair price
1 34 for the assets while allowing an impartial third party using
1 35 predetermined sales criteria to determine the most qualified
2 1 buyer. By using the sales proceeds to prepay remaining
2 2 construction debt and provide revenue for an equipment
2 3 replacement fund, state-provided funding for network
2 4 maintenance and upgrade will be minimized. Continued
2 5 provision of the full array of network services will appear
2 6 seamless to current authorized users when the sales process is
2 7 completed.
2 8 2. DEFINITIONS. As used in sections 1 through 6 of this
2 9 Act, unless the context otherwise requires:
2 10 a. "Advanced telecommunications services" means high=
2 11 quality voice, data, graphics, and video telecommunications
2 12 services using any technology with regard to transmission
2 13 media that utilizes high-speed, switched, broadband
2 14 telecommunications capability.
2 15 b. "Authority" means the Iowa communications network sales
2 16 authority established to oversee the sale of backbone assets
2 17 pursuant to this Act.

2 18 c. "Authorized user" means a private or public agency, as
2 19 defined in section 8D.2, except for a public or private agency
2 20 which was required pursuant to section 8D.9, subsection 1, to
2 21 certify to the commission not later than July 1, 1994, the
2 22 agency's intent to become a part of the network and which did
2 23 not provide such certification. Agencies that obtained
2 24 legislative approval to join the network after July 1, 1994,
2 25 will be treated as a public or private agency for purposes of
2 26 this definition and all provisions of chapter 8D.

2 27 d. "Backbone assets" means the backbone fiber comprising
2 28 the five fiber optic rings located outside of the Des Moines
2 29 metropolitan area and the optronic equipment associated with
2 30 those rings.

2 31 e. "Capacity" means the information-carrying ability of a
2 32 telecommunications facility. The measurement of capacity is
2 33 determined by the purpose of the facility.

2 34 f. "Certificates of participation" means the two issuances
2 35 of certificates of participation issued by the state in 1992
3 1 and 1993 to fund the construction of the owned fiber and
3 2 equipment for Parts I and II of the network as defined in
3 3 chapter 8D.

3 4 g. "Commission" means the Iowa telecommunications and
3 5 technology commission as defined in section 8D.2.

3 6 h. "Indefeasible right of use" means an indefeasible right
3 7 to use fiber, including an entire cable or a portion of the
3 8 capacity of a cable, or channels of a given bandwidth for a
3 9 defined period of time.

3 10 i. "Iowa communications network hub" means the
3 11 telecommunications facility located in the joint forces
3 12 headquarters armory, Johnston, Iowa, where the main switching
3 13 and maintenance operations of the network take place.

3 14 j. "Network" means the Iowa communications network.

3 15 k. "Network operations center" means the maintenance and
3 16 network diagnostic equipment that manages the network
3 17 infrastructure.

3 18 l. "Optronics" means the fiberoptic equipment that
3 19 activates the fiber and allows light to traverse.

3 20 m. "Professional agent" means any person having
3 21 specialized expertise required in the process of selling the
3 22 Iowa communications network including but not limited to
3 23 expertise regarding brokerage, contracting, asset valuation,
3 24 sales, or negotiation services.

3 25 n. "Prospective purchaser" means the potential purchaser
3 26 of the network that the professional agent recommends to the
3 27 authority to purchase the network assets, as provided in
3 28 section 3 of this Act.

3 29 o. "Qualified purchaser" means a prospective purchaser
3 30 that has been approved by the governor and qualified in
3 31 accordance with the provisions of section 4 of this Act.

3 32 p. "Right-of-way accommodation agreement" means a twenty=
3 33 year agreement between the network and the department of
3 34 transportation that includes an option to extend the agreement
3 35 for an additional ten years, which is definitive with respect
4 1 to the use of interstate rights-of-way and gives the
4 2 department of transportation the sole right to approve or deny
4 3 other users of the sheath, trench, or any of the ducts.

4 4 q. "Telecommunications facility" means a collection of
4 5 fibers which originates at an access point and ends at the
4 6 fiberoptic termination connector attached to the electronic
4 7 and optronic equipment necessary to transmit voice, video, or
4 8 data transmissions across the fiberoptic network.

4 9 r. "Telecommunications services" means the provision of
4 10 any of the following services:

- 4 11 (1) Local exchange telephone services.
- 4 12 (2) Long distance telephone services.
- 4 13 (3) Internet access services.
- 4 14 (4) Cable television services.

4 15 Sec. 2. IOWA COMMUNICATIONS NETWORK SALES AUTHORITY
4 16 ESTABLISHED.

4 17 1. AUTHORITY ESTABLISHED == PURPOSE == POWERS. An Iowa
4 18 communications network sales authority is established with the
4 19 sole authority to oversee the sales process regarding transfer
4 20 of ownership of the network's backbone assets to a qualified
4 21 purchaser pursuant to this Act. Subject to final approval of
4 22 the selection of the qualified purchaser and terms of sale by
4 23 the governor, the authority's operation shall not be subject
4 24 to the jurisdiction or control of any other state agency, and
4 25 the authority shall possess full and sole authority over the
4 26 Iowa communications network backbone asset sales process.
4 27 However, the authority is subject to the general operations
4 28 practices and procedures which are generally applicable to

4 29 other state agencies during the period of its operation. The
4 30 authority shall be in existence from the effective date of
4 31 this Act until a qualified purchaser has been approved by the
4 32 governor, and all sales agreements necessary to complete the
4 33 sale have been negotiated and entered into.

4 34 2. MEMBERSHIP. Membership of the authority shall consist
4 35 of the treasurer of state, the auditor of state, two members
5 1 of the Iowa telecommunications and technology commission, and
5 2 one member of the Iowa utilities board. Three members of the
5 3 authority shall constitute a quorum, and the members shall
5 4 elect a chairperson, vice chairperson, secretary, and other
5 5 officers as determined necessary. Meetings of the authority
5 6 shall be held at the call of the chairperson or when a
5 7 majority of the members so requests. The members of the
5 8 authority shall not receive compensation by reason of their
5 9 membership.

5 10 Sec. 3. PROFESSIONAL AGENT RETENTION. The authority shall
5 11 issue a request for proposals to retain a professional agent
5 12 with telecommunications asset sales experience to market and
5 13 coordinate the sales process of the backbone assets.

5 14 The governor, in consultation with the treasurer of state
5 15 and the department of management, may negotiate fair and
5 16 equitable terms of compensation for the professional agent.
5 17 The described backbone assets shall only be available for a
5 18 single private vendor, or a consortium acting as a single
5 19 private vendor, to purchase and the state shall retain an
5 20 infeasible right of use with respect to certain amounts of
5 21 backbone capacity in optical wavelengths for a negotiated
5 22 period of seven to twenty-five years, and two optional renewal
5 23 periods of ten years each. As part of the sale, the purchaser
5 24 shall enter into infeasible right-of-use agreements with the
5 25 state in which the purchaser shall grant the state an
5 26 infeasible right of use with respect to backbone capacity
5 27 and optical wavelengths and Part II facilities and the dark
5 28 fiber connecting various Part III aggregation points to
5 29 network backbone-switching points. During the term of an
5 30 infeasible right-of-use agreement, the state as holder of
5 31 the infeasible right of use will have complete and total
5 32 ownership of the fiber or channels identified in the
5 33 infeasible right-of-use agreement, may use the fiber or
5 34 channels as if they were a physically owned asset of the
5 35 state, and the state's interest in the fiber or channels
6 1 cannot be annulled or made void by the grantor of the
6 2 infeasible right of use or any other party. At the end of
6 3 the term of an infeasible right-of-use agreement and any
6 4 renewal periods, title to the equipment and fiber assets and
6 5 optical wavelength capacities covered by the agreement shall
6 6 pass completely to the purchaser. The terms of the sale of
6 7 the assets shall also include provisions committing the
6 8 commission to purchase field services, including maintenance,
6 9 provisioning, and build out, from the purchaser and committing
6 10 the commission to pay a monthly fee for fiber maintenance and
6 11 field services for the assets that are sold. The request for
6 12 proposals shall be issued no later than six months from the
6 13 date of enactment of this Act. The request for proposals may
6 14 include:

6 15 1. A detailed list of the network assets for sale.

6 16 2. A detailed description of the unfettered and
6 17 unrestricted use of specified capacities of optical
6 18 wavelengths occupying a portion of the backbone assets.

6 19 3. A procedure to determine the compensation for the
6 20 successful professional agent.

6 21 4. Parameters surrounding the sale, to be determined by
6 22 the governor, which shall include but not be limited to the
6 23 following:

6 24 a. The amount of time the state would allow the
6 25 professional agent to market the assets.

6 26 b. A provision that the governor or the governor's
6 27 designee shall have the ultimate discretion to accept or
6 28 reject an offer from a prospective purchaser.

6 29 c. A detailed framework for the infeasible right-of-use
6 30 agreement between the state and the successful purchaser as
6 31 well as infeasible right-of-use agreements for Part II
6 32 facilities. The infeasible right-of-use agreements and any
6 33 other agreements necessary to complete the sale shall clearly
6 34 provide that the network and the state shall be held harmless
6 35 in the event the purchaser suffers a loss of revenue due to a
7 1 failure of any assets sold to the purchaser or to a failure of
7 2 any portion of the network being shared by the network.

7 3 d. A detailed process and procedures for routing capacity
7 4 from the backbone termination points in public buildings to

7 5 sites owned by the purchaser and sharing of alternating
7 6 current power, direct current power, and high-voltage
7 7 alternating current power needed to operate the purchaser's
7 8 equipment and related expenses in the public buildings.
7 9 e. A detailed framework for the standards required
7 10 regarding network maintenance.
7 11 f. A requirement that the purchaser offer advanced
7 12 telecommunications services equitably across the state,
7 13 specifically serving areas where those types of services are
7 14 not yet available.
7 15 g. A requirement that the purchaser grant the network the
7 16 right to participate in future upgrades of the backbone
7 17 electronics statewide in the fiberoptic network outside the
7 18 Des Moines metropolitan area.
7 19 h. The criteria to be used as a basis for determining the
7 20 successful purchaser.
7 21 i. An analysis of a prospective purchaser's financial
7 22 stability with particular attention to assessing the
7 23 prospective purchaser's potential vulnerability to bankruptcy.
7 24 j. A requirement that during the negotiations process, the
7 25 prospective purchaser shall offer the state reasonable surety
7 26 of long-term economic viability. Such surety may include a
7 27 requirement of posting bond or some other financial
7 28 compensation to guard against the purchaser's inability to
7 29 meet the financial terms of the agreement. The purchaser
7 30 shall guarantee that the state's indefeasible right-of-use
7 31 agreements shall be protected in the case of the bankruptcy of
7 32 the purchaser.
7 33 The authority shall select the professional agent
7 34 submitting the proposal that provides the best overall value
7 35 to the state. The public interest requires that the
8 1 authority's ability to enter into a contract with a
8 2 professional agent not be delayed; therefore, the decision of
8 3 the authority shall be final. Notwithstanding the provisions
8 4 of chapter 17A a professional agent not selected by the
8 5 authority shall not be entitled to a contested case hearing or
8 6 to otherwise challenge the decision of the authority.
8 7 Sec. 4. MARKETING OF THE NETWORK ASSETS. Using the
8 8 parameters included in the request for proposals, the selected
8 9 professional agent shall develop a process to market and sell
8 10 the assets designed to maximize the state's proceeds from the
8 11 sale. During the marketing period, using the predetermined
8 12 parameters, including meeting financial qualifications, the
8 13 professional agent shall identify a prospective purchaser and
8 14 submit the prospective purchaser to a qualification process
8 15 designed to verify the purchaser's ability to adequately
8 16 operate and maintain the backbone network. This verification
8 17 process shall include the following:
8 18 1. Verifying that the purchaser has proven experience
8 19 operating a telecommunications network.
8 20 2. Verifying that the purchaser has the ability to
8 21 purchase the network outright or has the collateral to secure
8 22 financing of a loan to purchase the network.
8 23 3. Other criteria as established by the general assembly
8 24 or the governor.
8 25 4. Verifying that the purchaser agrees to the requirement
8 26 that other telecommunications companies providing services
8 27 since January 1, 2009, be allowed to enter into a buyers
8 28 consortium and share in the purchased assets or facilities in
8 29 proportion to terms established in the consortium agreement
8 30 which shall guarantee or result in equal opportunity for
8 31 access by consortium members.
8 32 5. Verifying that the purchaser is an entity that agrees
8 33 to guarantee equal access to the purchased assets to any
8 34 telecommunications company that has been providing services to
8 35 Iowa customers since January 1, 2009. Such equal access means
9 1 that the purchaser shall not do any of the following regarding
9 2 a telecommunications company providing services to Iowa
9 3 customers since January 1, 2009:
9 4 a. Discriminate by refusing or delaying access to the
9 5 purchased assets.
9 6 b. Degrade the quality of access or service provided.
9 7 c. Fail to disclose in a timely manner, upon reasonable
9 8 request and pursuant to a protective agreement concerning
9 9 proprietary information, all information reasonably necessary
9 10 for the design of network interface equipment, network
9 11 interface services, or software that will meet the
9 12 specifications of the purchaser.
9 13 d. Unreasonably refuse or delay interconnections or
9 14 provide inferior interconnections.
9 15 e. Discriminate in favor of itself or an affiliate in the

9 16 provision and pricing of, or extension of credit for, any
9 17 service.

9 18 6. Any telecommunications company as described in
9 19 subsection 5 may file a written complaint at any time with the
9 20 utilities board established in chapter 476 requesting the
9 21 board to determine compliance by the purchaser with the
9 22 provisions of this section or any board rules implementing
9 23 this section. Upon the filing of such complaint, the board
9 24 may promptly initiate a formal complaint proceeding and give
9 25 notice of the proceeding and the opportunity for hearing. The
9 26 formal complaint proceeding may be initiated at any time by
9 27 the board on its own motion. The board shall render a
9 28 decision in the proceeding within ninety days after the date
9 29 the written complaint was filed.

9 30 Upon verification by the professional agent of the
9 31 purchaser's ability to adequately operate and maintain the
9 32 backbone network, the authority shall make a recommendation
9 33 regarding a purchaser and the terms of sale to the governor.
9 34 The governor shall have the right of final approval of the
9 35 purchaser and the terms of sale.

10 1 If the professional agent is unable to identify a
10 2 prospective purchaser able to adequately operate and maintain
10 3 the backbone network, the professional agent shall submit a
10 4 report to the authority explaining the reasons supporting this
10 5 conclusion.

10 6 Sec. 5. POSTSELECTION PROCEDURES.

10 7 1. Once the governor has approved a purchaser and the
10 8 terms of sale, the authority shall enter into a contract with
10 9 the purchaser for sale of the assets. The authority shall
10 10 enter into a memorandum of understanding regarding procedures
10 11 for operation of the network until the sale is finalized with
10 12 the proposed purchaser. The memorandum shall indicate that
10 13 the purchaser, in good faith, intends to finalize the purchase
10 14 and shall pay a termination penalty if the purchaser does not
10 15 finalize the purchase.

10 16 2. Any outstanding debt or liens upon the network assets,
10 17 including the certificates of participation, shall be
10 18 discharged out of the state's proceeds of closing, so that the
10 19 purchaser receives marketable title to the assets. Prepayment
10 20 of the certificates of participation shall be made prior to
10 21 closing the sale of assets or as part of closing the sale, and
10 22 shall be accomplished in a way that does not jeopardize the
10 23 tax-exempt status of the certificates of participation.

10 24 3. The state and the purchaser shall also negotiate their
10 25 relevant interest in right-of-way accommodation agreements and
10 26 leases and easements for uses of rights-of-way. The
10 27 negotiations may specify that the purchaser shall have the
10 28 option of paying the entire sale price in a single lump sum
10 29 payment at the time that the sale is finalized, or
10 30 alternatively may pay for the backbone assets at the time that
10 31 the sale is finalized and make an annual payment for use of
10 32 the rights-of-way.

10 33 4. The purchaser shall immediately establish points of
10 34 presence near the existing network switching centers and
10 35 establish fiber extensions and connectivity between them. The
11 1 purchaser shall physically locate in the vicinity of the joint
11 2 forces headquarters armory in Johnston, Iowa, and establish
11 3 fiber connectivity between the network hub and the vendor's
11 4 location. Duplicate racks of backbone core equipment shall be
11 5 provided by the purchaser and installed by the network to
11 6 carry traffic while the network backbone is transferred to the
11 7 purchaser. The purchaser shall purchase the equipment
11 8 required in this process for the network and pay any and all
11 9 related expenses associated with this conversion effort.

11 10 5. The authority shall enter into indefeasible right-of-
11 11 use agreements with the purchaser in which the purchaser shall
11 12 grant the state an indefeasible right of use with respect to
11 13 the backbone optical wavelengths and Part II facilities and
11 14 the dark fiber connecting various Part III aggregation points
11 15 to network backbone-switching points. The indefeasible right-
11 16 of-use agreements and any other agreements necessary to
11 17 complete the sale shall clearly provide that the network and
11 18 the state shall not be held liable in any manner in the event
11 19 the purchaser suffers a loss of revenue due to a failure of
11 20 any portion of the network being shared by the network.

11 21 6. The authority shall enter into any other agreements
11 22 necessary to complete the sale, including agreements
11 23 committing the commission to purchase field services,
11 24 including maintenance provisioning, and build out, from the
11 25 purchaser and committing the commission to pay a monthly fee
11 26 for fiber maintenance and field services for the assets that

11 27 are sold. The request for proposals shall be issued no later
11 28 than six months from the date of enactment of this Act.

11 29 Sec. 6. PROGRESS REPORTS. The authority, in consultation
11 30 with the governor, shall submit to the general assembly
11 31 periodic progress reports at three-month intervals from the
11 32 effective date of this Act. The reports shall indicate the
11 33 extent of progress, during the reporting period, in issuing
11 34 the request for proposals; retaining a professional agent;
11 35 marketing efforts by the professional agent; identification,
12 1 qualification, and selection of a purchaser; and the
12 2 postselection process of finalizing the sale, entering into
12 3 indefeasible right of use agreements, and maintaining the
12 4 network.

12 5 Sec. 7. Section 8D.2, Code 2009, is amended by adding the
12 6 following new subsection:

12 7 NEW SUBSECTION. 2A. "Indefeasible right of use" means an
12 8 indefeasible right to use fiber, including an entire cable or
12 9 a portion of the capacity of a cable, or channels of a given
12 10 bandwidth for a defined period of time.

12 11 Sec. 8. Section 8D.3, subsection 3, paragraph i, Code
12 12 2009, is amended to read as follows:

12 13 i. Evaluate existing and projected rates for use of the
12 14 system and ensure that rates are sufficient to pay for the
12 15 operation and required equipment upgrade and replacement of
12 16 the system excluding the cost of construction and lease costs
12 17 for Parts I, II, and III. The commission shall establish all
12 18 hourly rates to be charged to all authorized users for the use
12 19 of the network and shall consider all costs of the network in
12 20 establishing the rates. A fee established by the commission
12 21 to be charged to a hospital licensed pursuant to chapter 135B,
12 22 a physician clinic, or the federal government shall be at an
12 23 appropriate rate so that, at a minimum, there is no state
12 24 subsidy related to the costs of the connection or use of the
12 25 network related to such user.

12 26 Sec. 9. Section 8D.11, Code 2009, is amended by adding the
12 27 following new subsection:

12 28 NEW SUBSECTION. 1A. The commission may use indefeasible
12 29 right-of-use agreements to acquire and dispose of property,
12 30 equipment, and services as provided in section 8D.13,
12 31 subsection 4.

12 32 Sec. 10. Section 8D.13, subsection 2, Code 2009, is
12 33 amended to read as follows:

12 34 2. For purposes of this section, unless the context
12 35 otherwise requires:

13 1 a. "Part I" means the communications connections ~~between~~
13 2 to central switching and institutions under the control of the
13 3 board of regents, nonprofit institutions of higher education
13 4 eligible for tuition grants, and the regional switching
13 5 centers for the remainder of the network.

13 6 b. "Part II" means the communications connections ~~between~~
13 7 to the regional switching centers and the secondary switching
13 8 centers.

13 9 c. "Part III" means the communications connection ~~between~~
13 10 to the secondary switching centers and the agencies defined in
13 11 section 8D.2, subsections 4 and 5, excluding state agencies,
13 12 institutions under the control of the board of regents,
13 13 nonprofit institutions of higher education eligible for
13 14 tuition grants, and the judicial branch, judicial district
13 15 departments of correctional services, hospitals and physician
13 16 clinics, agencies of the federal government, and post offices.

13 17 Sec. 11. Section 8D.13, subsection 3, Code 2009, is
13 18 amended to read as follows:

13 19 3. The financing for the procurement costs for the
13 20 entirety of Part I except for the communications connections
13 21 ~~between to~~ central switching and institutions under the
13 22 control of the board of regents, and nonprofit institutions of
13 23 higher education eligible for tuition grants, and for the
13 24 video, data, and voice capacity for state agencies and for
13 25 Part II and Part III, shall be provided by the state. The
13 26 financing for the procurement and maintenance costs for Part
13 27 III shall be provided by the state. ~~A local school board,~~
~~13 28 governing authority of a nonpublic school, or an area~~
~~13 29 education agency board may elect to provide one hundred~~
~~13 30 percent of the financing for the procurement and maintenance~~
~~13 31 costs for Part III to become part of the network. The basis~~
~~13 32 for the amount of state financing is one hundred percent of a~~
~~13 33 single interactive audio and interactive video connection for~~
~~13 34 Part III, and such data and voice capacity as is necessary.~~
13 35 If a school board, governing authority of a nonpublic school,
14 1 or area education agency board elects to provide one hundred
14 2 percent of the financing for the leasing costs for Part III,

14 3 the school district or area education agency may become part
14 4 of the network as soon as the network can reasonably connect
14 5 the district or agency. A local school board, governing
14 6 authority of a nonpublic school, or an area education agency
14 7 board may also elect not to become part of the network.
14 8 Construction of Part III, related to a school board, governing
14 9 authority of a nonpublic school, or area education agency
14 10 board which provides one hundred percent of the financing for
14 11 the leasing costs for Part III, may proceed as determined by
14 12 the commission and consistent with the purpose of this
14 13 chapter.

14 14 Sec. 12. Section 8D.13, Code 2009, is amended by adding
14 15 the following new subsection:

14 16 NEW SUBSECTION. 3A. If the state sells assets of the
14 17 network pursuant to sections 1 through 5 of this Act, and
14 18 retains backbone capacity from another telecommunications
14 19 provider, publicly owned facilities that house primary and
14 20 secondary switching facilities shall provide access to that
14 21 provider in the geographical area to the primary and secondary
14 22 switching facilities housing the fiberoptics termination
14 23 equipment by means of established fiber entry ducts, and to
14 24 the building grounding system. The provider's access to the
14 25 primary and secondary switching facilities shall be
14 26 coordinated through the network's staff.

14 27 Sec. 13. Section 8D.13, subsection 4, Code 2009, is
14 28 amended to read as follows:

14 29 4. ~~The commission shall develop the requests for proposals~~
14 30 ~~may enter into contracts and indefeasible right-of-use~~
14 31 ~~agreements that are needed for the Iowa communications network~~
14 32 ~~to function with sufficient capacity to serve the video, data,~~
14 33 ~~and voice requirements of state agencies and for educational~~
14 34 ~~telecommunications applications. The commission shall develop~~
14 35 ~~a request for proposals for each of the systems that will make~~
15 1 ~~up the network. The commission may develop a request for~~
15 2 ~~proposals for each definitive component of the network or the~~
15 3 ~~commission may provide in the request for proposals for each~~
15 4 ~~such system that separate contracts may be entered into for~~
15 5 ~~each definitive component covered by the request for~~
15 6 ~~proposals. The requests for proposals contracts entered into~~
15 7 ~~by the commission may be for the purchase, lease-purchase, or~~
15 8 ~~lease of the component parts of the network consistent with~~
15 9 ~~the provisions of this chapter, may require maintenance costs~~
15 10 ~~to be identified, and the resulting contract may provide for~~
15 11 ~~maintenance for parts of the network. The master contract may~~
15 12 ~~provide for electronic classrooms, satellite equipment,~~
15 13 ~~receiving equipment, studio and production equipment, and~~
15 14 ~~other associated equipment as required. The indefeasible~~
15 15 ~~right-of-use agreements entered into by the commission may be~~
15 16 ~~long-term agreements and may retain the right to use portions~~
15 17 ~~of capacity of any fiberoptic cable that the commission sells~~
15 18 ~~to a third party. The indefeasible right-of-use agreements~~
15 19 ~~may include provisions requiring the commission to contribute~~
15 20 ~~to the cost of maintenance and upgrades of the network.~~
15 21 ~~During the term of an indefeasible right-of-use agreement, the~~
15 22 ~~state as a party to the indefeasible right-of-use agreement~~
15 23 ~~shall have complete and total ownership of the fiber or~~
15 24 ~~channels identified in the indefeasible right-of-use~~
15 25 ~~agreement, may use the fiber or channels as if they were a~~
15 26 ~~physically owned asset of the state, and the state's interest~~
15 27 ~~in the fiber or channels cannot be annulled or made void by~~
15 28 ~~the grantor of the indefeasible right of use or any other~~
15 29 ~~party. At the end of the term of an indefeasible right-of-use~~
15 30 ~~agreement and any renewal periods, title to the equipment and~~
15 31 ~~fiber assets and optical wavelength capacities covered by the~~
15 32 ~~agreement shall pass completely to the purchaser.~~

15 33 Sec. 14. Section 8D.13, subsection 5, unnumbered paragraph
15 34 1, Code 2009, is amended to read as follows:

15 35 The state shall lease all fiberoptic cable facilities or
16 1 facilities with DS=3 capacity for Part III connections for
16 2 which state funding is provided. The state shall lease all
16 3 fiberoptic cable facilities or facilities with DS=3 or DS=1
16 4 capacity for the judicial branch, judicial district department
16 5 of correctional services, and state agency connections for
16 6 which state funding is provided. Such facilities shall be
16 7 leased from qualified providers. The state shall not own such
16 8 facilities, except for those facilities owned by the state as
16 9 of January 1, 1994. Notwithstanding any other provision of
16 10 this section, the state may negotiate the acquisition of a
16 11 Part III connection following the termination of a lease with
16 12 a qualified provider if offered by the vendor for such a Part
16 13 III connection, if the commission determines it to be in the

16 14 best interest of the network.

16 15 Sec. 15. Section 8D.13, subsection 6, Code 2009, is
16 16 amended by striking the subsection.

16 17 Sec. 16. Section 8D.13, subsection 11, Code 2009, is
16 18 amended to read as follows:

16 19 11. The fees charged for use of the network ~~and state~~
16 20 ~~communications~~ shall be based on the ongoing operational and
16 21 depreciation expenses of the network and of providing state

16 22 communications. For the services rendered to state agencies
16 23 by the commission, the commission shall prepare a statement of
16 24 services rendered and the agencies shall pay in a manner
16 25 consistent with procedures established by the department of
16 26 administrative services.

16 27 Sec. 17. Section 8D.14, subsection 1, Code 2009, is
16 28 amended to read as follows:

16 29 1. ~~There An Iowa communications network fund is created in~~
16 30 ~~the office of the treasurer of state a fund to be known as the~~
16 31 ~~Iowa communications network fund~~ under the control of the Iowa
16 32 telecommunications and technology commission. ~~There shall be~~

16 33 ~~deposited into the~~ The fund shall be comprised of Iowa
16 34 communications network fund proceeds from bonds issued for
16 35 purposes of projects authorized pursuant to section 8D.13,
17 1 funds received from leases pursuant to section 8D.11, and
17 2 other moneys by law credited to or designated by a person for
17 3 deposit into the fund. Amounts deposited into the fund are
17 4 appropriated to and for the use of the commission.

17 5 Notwithstanding section 12C.7, interest earned on amounts
17 6 deposited in the fund shall be credited to the fund, and
17 7 interest received by the state as a result of investing the
17 8 contents of the fund shall be credited to the fund for use by

17 9 the commission. Notwithstanding section 8.33, moneys
17 10 deposited into and appropriated from the fund that remain
17 11 unencumbered or unobligated at the close of the fiscal year
17 12 shall not revert but shall remain available for expenditure
17 13 for the purposes designated until the close of the succeeding
17 14 fiscal year.

17 15 Sec. 18. NEW SECTION. 8D.15 IOWA COMMUNICATIONS NETWORK
17 16 EQUIPMENT UPGRADE AND REPLACEMENT TRUST FUND.

17 17 An Iowa communications network equipment upgrade and
17 18 replacement trust fund is established, separate and apart from
17 19 all other public moneys or funds of the state, under the
17 20 control of the treasurer of state and the department of
17 21 management. The fund shall be comprised of the proceeds from
17 22 the sale of Iowa communications network assets, including
17 23 certain state-owned fiberoptic cable and related equipment
17 24 located outside the Des Moines metropolitan area, and the
17 25 portion of the fees charged to authorized users for
17 26 depreciation. Contents of this fund shall only be used to
17 27 replace failed or obsolete network equipment owned by the
17 28 state and equipment included in indefeasible right-of-use
17 29 agreements in which the network obtains statewide transport
17 30 capacity, and shall not be used for any other purpose. The
17 31 treasurer of state and the department of management shall
17 32 jointly verify an annual estimate by the commission of the
17 33 amount needed for equipment replacement pursuant to this
17 34 section, and releases of moneys pursuant thereto shall require
17 35 an annual appropriation by the general assembly to the
18 1 commission. The commission may solicit or accept gifts,
18 2 including donations and bequests, to be deposited into the
18 3 fund for use in accordance with the purposes of the fund.
18 4 Interest received by the state as a result of investing the
18 5 contents of the fund shall be credited to the fund for use by
18 6 the commission.

18 7 Sec. 19. EFFECTIVE DATE. This Act, being deemed of
18 8 immediate importance, takes effect upon enactment.

18 9 EXPLANATION

18 10 This bill provides a mechanism for the sale of Iowa
18 11 communications network (ICN) assets with specified retained
18 12 rights by the state, and provides for related technical and
18 13 substantive changes to the provisions of Code chapter 8D.

18 14 FINDINGS AND PURPOSE. The bill contains a statement of
18 15 findings and purpose section relating to legislative intent
18 16 regarding the sale, noting that the ICN is a valuable state
18 17 telecommunications asset, that it provides equal access to
18 18 users of state-of-the-art voice, video, data, and internet
18 19 services at comparable prices statewide, and that it is
18 20 essential that the educational content it carries, and the
18 21 public defense functions it serves, be retained. The bill
18 22 provides that in order to ensure that ICN utilization is
18 23 maximized while minimizing further investment by the state to
18 24 maintain infrastructure, it is in the best interest of the

18 25 citizens of the state to offer some ICN assets for sale, while
18 26 retaining the capacity to provide services to users. The bill
18 27 provides that this would be accomplished through the sale of
18 28 most of the fiberoptic cable and optronics, or light-passing
18 29 equipment, while retaining capacity through long-term
18 30 indefeasible right-of-use agreements, thereby continuing to
18 31 provide telecommunications services and adequate capacity into
18 32 the future.

18 33 DEFINITIONS. The bill provides a definitions section.
18 34 Included among the defined terms are definitions of
18 35 "authority" as referring to an Iowa communications network
19 1 sales authority established to oversee the sale of the
19 2 backbone assets; "indefeasible right of use" (IRU) as an
19 3 indefeasible right to use fiber, including an entire cable or
19 4 a portion of the capacity of a cable, or channels of a given
19 5 bandwidth for a defined period of time; a "professional agent"
19 6 as a person having specialized expertise required in the
19 7 process of selling the Iowa communications network including
19 8 but not limited to expertise regarding brokerage, contracting,
19 9 asset valuation, sales, or negotiation services; a
19 10 "prospective purchaser" as the potential purchaser of the
19 11 network that the professional agent recommends to the
19 12 authority to purchase the network assets; and a "qualified
19 13 purchaser" as a prospective purchaser that has been approved
19 14 by the governor and qualified in accordance with provisions
19 15 specified in the bill.

19 16 AUTHORITY ESTABLISHED. The bill provides that the Iowa
19 17 communications network sales authority is the sole authority
19 18 to oversee the sales process regarding transfer of ownership
19 19 of the network's backbone assets to a qualified purchaser.
19 20 The bill provides that subject to final approval of the
19 21 selection of the qualified purchaser and the terms of sale by
19 22 the governor, the authority's operation shall not be subject
19 23 to the jurisdiction or control of any other state agency. The
19 24 bill provides, however, that the authority is subject to the
19 25 general operations practices applicable to other state
19 26 agencies during the period of its operation, and that this
19 27 period of operation shall be from the effective date of the
19 28 bill until a qualified purchaser has been approved by the
19 29 governor, and all sales agreements necessary to complete the
19 30 sale have been negotiated and entered into. The bill provides
19 31 that membership of the authority shall consist of the
19 32 treasurer of state, the auditor of state, two members of the
19 33 Iowa telecommunications and technology commission, and one
19 34 member of the Iowa utilities board.

19 35 PROFESSIONAL AGENT RETENTION. The bill provides that the
20 1 authority shall issue a request for proposals to retain a
20 2 professional agent with telecommunications asset sales
20 3 experience to market and coordinate the sales process of the
20 4 backbone assets. The bill provides that the governor, in
20 5 consultation with the treasurer of state and the department of
20 6 management, shall be authorized to negotiate fair and
20 7 equitable terms of compensation for the professional agent.
20 8 The bill provides that the backbone assets shall only be
20 9 available for a single private vendor, or a consortium acting
20 10 as a single private vendor, to purchase and that the state
20 11 shall retain an indefeasible right of use with respect to
20 12 certain amounts of backbone capacity in optical wavelengths
20 13 for a negotiated period of seven to 25 years, and two optional
20 14 renewal periods of 10 years each. The bill provides that as a
20 15 part of the sale, the purchaser shall enter into indefeasible
20 16 right-of-use agreements with the state in which the purchaser
20 17 shall grant the state an indefeasible right of use with
20 18 respect to backbone capacity and optical wavelengths and Part
20 19 II facilities and the dark fiber connecting various Part III
20 20 aggregation points to network backbone-switching points. The
20 21 bill provides that during the term of an indefeasible right-
20 22 of-use agreement, the state as the holder will have complete
20 23 and total ownership of the fiber or channels identified in the
20 24 indefeasible right-of-use agreement, may use the fiber or
20 25 channels as if they were a physically owned asset of the
20 26 state, and that the state's interest in the fiber or channels
20 27 cannot be annulled or made void by the grantor of the
20 28 indefeasible right of use or any other party. The bill
20 29 provides that at the end of the indefeasible right-of-use
20 30 agreement and any renewal periods, title to the equipment and
20 31 fiber assets and optical wavelength capacities covered by the
20 32 agreement shall pass completely to the purchaser. The bill
20 33 provides that the terms of sale shall include provisions
20 34 committing the commission to purchase field services,
20 35 including maintenance, provisioning, and build out, from the

21 1 purchaser and committing the commission to pay a monthly fee
21 2 for fiber maintenance and field services for the assets that
21 3 are sold. The bill provides that the request for proposals
21 4 shall be issued no later than six months from the bill's date
21 5 of enactment.

21 6 The bill provides a list of potential subject areas for
21 7 incorporation into the request for proposals, including, among
21 8 others, a procedure to determine the compensation for the
21 9 successful professional agent. The bill provides that the
21 10 parameters surrounding the sale, to be determined by the
21 11 governor, shall include, but not be limited to, the amount of
21 12 time the state would allow the professional agent to market
21 13 the assets, a provision that the governor or the governor's
21 14 designee shall have ultimate discretion to accept or reject an
21 15 offer, and a detailed framework for IRU agreements between the
21 16 state and a purchaser, including the provision that the state
21 17 shall be held harmless in the event the purchaser suffers a
21 18 loss of revenue due to a failure of any assets or any portion
21 19 of the network being shared by the network. The bill provides
21 20 that the framework shall also include a process and procedures
21 21 for routing capacity and sharing of power currents needed to
21 22 operate the purchaser's equipment and related expenses, a
21 23 framework for the standards required regarding network
21 24 maintenance, a requirement that the purchaser offer advanced
21 25 telecommunications services equitably across the state and
21 26 specifically serving areas where those types of services are
21 27 not yet available, a requirement that the purchaser grant the
21 28 network the right to participate in future upgrades, purchaser
21 29 selection criteria, an analysis of a prospective purchaser's
21 30 financial stability, and a requirement that during the
21 31 negotiations process, the prospective purchaser shall offer
21 32 the state specified reasonable surety of long-term economic
21 33 viability and shall guarantee that the state's IRUs shall be
21 34 protected in the case of the bankruptcy of the purchaser.

21 35 **SELECTION PROCESS FOR QUALIFIED PURCHASER.** The bill
22 1 provides that the authority shall select the professional
22 2 agent submitting the proposal that provides the best overall
22 3 value to the state, and that using the parameters included in
22 4 the request for proposals, the selected professional agent
22 5 shall develop a process to market and sell the assets designed
22 6 to maximize the state's proceeds from the sale. The bill
22 7 provides that during the marketing period, using the
22 8 predetermined parameters, the professional agent shall
22 9 identify a prospective purchaser and submit the prospective
22 10 purchaser to a qualification process designed to verify the
22 11 purchaser's ability to adequately operate and maintain the
22 12 backbone network. The bill provides that the verification
22 13 process shall include verifying that the purchaser has proven
22 14 experience operating a telecommunications network, has the
22 15 ability to purchase the network outright collateral to secure
22 16 financing, and additional criteria established by the general
22 17 assembly or the governor. The bill also provides that there
22 18 shall be verification that the purchaser agrees to the
22 19 requirement that other telecommunications companies providing
22 20 services since January 1, 2009, be allowed to enter into a
22 21 buyers consortium and share in the purchased assets or
22 22 facilities in proportion to terms established in the
22 23 consortium agreement which shall guarantee or result in equal
22 24 opportunity for access by a consortium member, and that the
22 25 purchaser is an entity that agrees to guarantee equal access
22 26 to the purchased assets to any telecommunications company that
22 27 has been providing services to Iowa customers since January 1,
22 28 2009. The bill provides that this equal access means that the
22 29 purchaser shall not, with regard to a telecommunications
22 30 company providing services to Iowa customers since January 1,
22 31 2009, discriminate by refusing or delaying access to the
22 32 purchased assets; degrade the quality of access or service
22 33 provided; fail to disclose all information reasonably
22 34 necessary for the design of network interface equipment,
22 35 network interface services, or software that will meet the
23 1 specifications of the purchaser; or unreasonably refuse or
23 2 delay interconnections or provide inferior interconnections,
23 3 discriminate in favor of itself or an affiliate in the
23 4 provision and pricing of, or extension of credit for, any
23 5 service. The bill provides that a telecommunications company
23 6 entering into a consortium may file a written complaint at any
23 7 time with the utilities board established in Code chapter 476
23 8 requesting the board to determine compliance by the purchaser
23 9 with these provisions.

23 10 The bill provides that after verification by the
23 11 professional agent of the purchaser's ability to adequately

23 12 operate and maintain the backbone network is given, the
23 13 authority shall make a recommendation regarding a purchaser
23 14 and the terms of sale to the governor, and that the governor
23 15 has the right of final approval of the purchaser and the terms
23 16 of sale. The bill provides that if the professional agent is
23 17 unable to identify a prospective purchaser able to adequately
23 18 operate and maintain the backbone network, the professional
23 19 agent shall submit a report to the authority explaining the
23 20 reasons supporting this conclusion.

23 21 NETWORK OPERATION PENDING SALE. The bill provides that the
23 22 authority shall enter into a memorandum of understanding
23 23 regarding procedures for operation of the network until the
23 24 sale is finalized with the prospective purchaser, which shall
23 25 include a provision that the purchaser in good faith intends
23 26 to finalize the purchase and shall pay a termination penalty
23 27 if the purchase is not finalized.

23 28 ADDITIONAL CONDITIONS OF SALE. The bill provides that any
23 29 outstanding debt or liens upon the network assets shall be
23 30 discharged out of the state's proceeds so that the purchaser
23 31 receives marketable title to the assets, and that prepayment
23 32 of certificates of participation, defined in the bill, shall
23 33 be made prior to closing the sale of assets or as part of
23 34 closing the sale, and accomplished in a manner not

23 35 jeopardizing the certificate's tax-exempt status. The bill
24 1 provides that the state and the purchaser shall negotiate
24 2 their relevant interest in rights-of-way and leases and
24 3 easements for uses of rights-of-way, that the purchaser shall
24 4 have the option of paying the entire sale price in a single
24 5 lump sum payment at the time that the sale is finalized or
24 6 alternatively may pay for the backbone assets at the time that
24 7 the sale is finalized and make an annual payment for use of
24 8 the rights-of-way, and that the purchaser shall immediately
24 9 establish points of presence near the existing network
24 10 switching centers and establish fiber extensions and
24 11 connectivity between them. The bill provides that the
24 12 purchaser shall physically locate in the vicinity of the joint
24 13 forces headquarters armory in Johnston, Iowa, and establish
24 14 fiber connectivity between the ICN hub and the vendor's
24 15 location, and that duplicate racks of backbone core equipment
24 16 shall be provided by the purchaser and installed by the
24 17 network to carry traffic while the network backbone is
24 18 transferred to the purchaser. The bill provides that the
24 19 purchaser shall purchase the equipment required in this
24 20 process for the network and pay any and all related expenses
24 21 associated with the conversion effort. The bill provides that
24 22 the authority, in consultation with the treasurer of state and
24 23 the governor, shall submit to the general assembly periodic
24 24 progress reports at three-month intervals from the effective
24 25 date of the bill indicating progress in issuing the request
24 26 for proposals; retaining a professional agent; marketing
24 27 efforts by the professional agent; identification,
24 28 qualification, and selection of a purchaser; and the
24 29 postselection process of finalizing the sale, entering into
24 30 infeasible right-of-use agreements, and maintaining the
24 31 network.

24 32 CODE CHAPTER 8D AMENDMENTS. The bill provides for a
24 33 conforming definition and references to IRUs in Code chapter
24 34 8D and conforming terminology changes and provisions regarding
24 35 changes in ownership of the network.

25 1 NETWORK ACQUISITIONS, DISPOSAL, AND ACCESS. The bill adds
25 2 a provision that the commission may use IRU agreements to
25 3 acquire and dispose of property, equipment, and services, and
25 4 deletes outdated language regarding a local school board,
25 5 governing authority of a nonpublic school, or area education
25 6 agency board election to provide financing costs for Part III
25 7 of the network. The bill provides that if the state sells
25 8 assets of the network pursuant to the procedure specified in
25 9 the bill and retains backbone capacity from another
25 10 telecommunications provider, publicly owned facilities that
25 11 house primary and secondary switching facilities shall provide
25 12 access to that provider in the geographic area to the primary
25 13 and secondary switching facilities housing the fiber optics
25 14 termination equipment in established fiber entry ducts, and to
25 15 the building grounding system. The bill provides that the
25 16 provider's access to the primary and secondary switching
25 17 facilities will be coordinated through the network's staff.
25 18 The bill provides that the state may negotiate the acquisition
25 19 of a Part III connection following the termination of a lease
25 20 with a qualified provider if offered by the vendor for such a
25 21 Part III connection if the commission determines it to be in
25 22 the best interest of the network.

25 23 NETWORK COSTS AND BILLINGS. The bill provides for the
25 24 inclusion of depreciation costs in the determination of rates
25 25 for use of the system, and deletes outdated language which had
25 26 required reports relating to the impact of changing technology
25 27 on potential costs and capabilities of the system, and
25 28 relating to a department of education study of new techniques
25 29 in distant teaching.

25 30 IOWA COMMUNICATIONS NETWORK FUND INTEREST AND UPGRADE AND
25 31 REPLACEMENT TRUST FUND. The bill further provides for the
25 32 retention of interest received by the state from the Iowa
25 33 communications network fund established in Code section 8D.14,
25 34 and for the establishment of an Iowa communications network
25 35 equipment upgrade and replacement trust fund. The bill
26 1 provides that the new trust fund shall be separate and apart
26 2 from all other public moneys or funds of the state, and shall
26 3 be under the control of the treasurer of state and the
26 4 department of management. The bill provides that the trust
26 5 fund will be comprised of the proceeds from the sale of ICN
26 6 assets, including certain state-owned fiberoptic cable and
26 7 related equipment located outside the Des Moines metropolitan
26 8 area, and the portion of the fees charged to authorized users
26 9 for depreciation. The bill provides that contents of the fund
26 10 shall only be used to replace failed or obsolete network
26 11 equipment owned by the state and equipment included in IRU
26 12 agreements in which the network obtains statewide transport
26 13 capacity. The bill provides that the treasurer of state and
26 14 the department of management shall jointly verify an annual
26 15 estimate by the commission of the amount needed for equipment
26 16 replacement pursuant to new Code section 8D.15, and that
26 17 releases of moneys pursuant to the estimate shall require an
26 18 annual appropriation by the general assembly to the
26 19 commission. The bill provides that the commission may solicit
26 20 or accept gifts, including donations and bequests, to be
26 21 deposited into the fund for use in accordance with the
26 22 purposes of the fund, and that interest received by the state
26 23 as a result of investing the contents of the fund shall be
26 24 credited to the fund for use by the commission.

26 25 The bill takes effect upon enactment.

26 26 LSB 1739XS 83
26 27 rn/nh/8.1